



March 10, 2011

BY ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, D.C. 20554

Re: Petition for Waiver – Allied Wireless Communications Corporation
Petition for Waiver – Georgia RSA #8 Partnership
WC Docket No. 09-197
CC Docket No. 96-45
WC Docket No. 08-71
Written *Ex Parte* Communication

Dear Ms. Dortch:

To supplement the record regarding the above-referenced petitions,¹ Allied Wireless Communications Corporation (“Allied Wireless”) and Georgia RSA #8 Partnership (“Georgia 8”)² demonstrate herein that relevant Commission precedent supports grant, not denial, of the Petitions.³

¹ See Georgia 8 Petition for Waiver, WC Docket No. 09-197, CC Docket No. 96-45, WC Docket No. 08-71 (filed Oct. 27, 2010); Allied Wireless Petition for Waiver, WC Docket No. 09-197, CC Docket No. 96-45, WC Docket No. 08-71 (filed Nov. 2, 2010) (collectively, the “Petitions”). The Petitions ask the Commission to effectuate the decisions by the Georgia Public Service Commission (“Georgia PSC”) to designate Allied Wireless and Georgia 8 as Eligible Telecommunications Carriers (“ETCs”). In these decisions, the Georgia PSC determined that the public interest would be served by making these ETC designations effective as of the date (i.e., April 26, 2010) of consummation of the Government-ordered divestiture in which Allied Wireless acquired wireless assets previously held by the former Alltel Corporation (which merged with Verizon Wireless in 2009). Without this effective date, the universal service fund (“USF”) support that had for years assisted Alltel (and the Government-appointed trustee who managed the assets after Alltel’s merger with Verizon Wireless) in providing telecommunications services in rural areas in Georgia would be interrupted.

² Allied Wireless holds a 33.33 percent interest in, and is the managing general partner of, Georgia 8. The other partners in Georgia 8 are Bulloch Cellular, Inc., Pineland Cellular, Inc., Plant Cellular RSA 8, Inc., and Planters Rural Cellular, Inc.

³ The submissions made by Allied Wireless and Georgia 8 in these proceedings explain all of the unique circumstances present here and provide ample justification for granting the Petitions, so this letter does

We have reviewed each of the cases in which ETCs have sought waivers of line count and/or certification filing deadlines that have been decided since the current rules were adopted in 2005.⁴ A review of this precedent shows that the Petitions present circumstances very much like those in cases in which the Wireline Competition Bureau ("Bureau") has granted waivers of these rules in the past, and that the Bureau decisions denying waivers are entirely distinguishable from the Petitions. To this latter point, and as shown below, Bureau denials of filing deadline waiver requests have come in circumstances that are not present here:

- DA 06-2582: Petitioner missed a clearly applicable filing deadline by more than two months because of confusion over the deadline.⁵
- DA 06-2585: Petitioner missed two clearly applicable filing deadlines, claiming uncertainty and confusion.⁶
- DA 07-1269: Petitioners missed clearly applicable filing deadlines due to unfamiliarity with and misunderstanding of the Commission's rules, insufficient information about the filing deadlines, or misinterpretation of information from USAC.⁷

not repeat these circumstances in detail. Likewise, this letter does not reiterate Allied Wireless's and Georgia 8's demonstration that the purpose of current filing deadline rule, adopted in 2005 "to enable customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC's designation date," can only be achieved by grant of the requested waivers. *See* Letter from Jeffrey C. Humiston, AWCC, to Marlene H. Dortch, FCC, WC Docket Nos. 08-71 *et al.* (filed Feb. 4, 2011), *quoting Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6411 ¶ 92 (2005).

⁴ In some of these cases, petitioners were seeking waivers of filing deadline rules in effect before the current rules applicable to newly-designated ETCs were adopted.

⁵ *Federal-State Joint Board on Universal Service, Mid-Tex Cellular, Ltd., Petition for Waiver of the FCC's Universal Service Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 14931, 14933 ¶ 10 (WCB 2006) ("[C]onfusion over the deadline . . . does not constitute special circumstances."). In a separate decision in the same order, the Bureau granted a filing deadline waiver where it would have been impossible for the petitioner to comply. *Id.* at 14933 ¶ 9.

⁶ *San Isabel Telecom, Inc., Petition for Waiver of Deadlines in Sections 54.307(c) and 54.314(d) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 14941, 14945 ¶ 10 (WCB 2006) ("[A] carrier's confusion does not establish special circumstances that warrant a deviation from the Commission's rules").

⁷ *Federal-State Joint Board on Universal Service, NPI-Omnipoint Wireless, LLC, Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules, SouthEast Telephone, Inc., Petition of Waiver of Deadlines in 47 C.F.R. § 54.809(c), SEI Data, Inc., Petition for Waiver of Filing Deadline In 47 C.F.R. Section 54.802(a)*, Order, CC Docket No. 96-45, 22 FCC Rcd 4946, 4949 ¶ 7 (WCB 2007) ("[A] carrier's confusion regarding the rules does not establish special circumstances that warrant deviation from the Commission's rules").

- DA 08-41: Petitioner missed a clearly applicable filing deadline by more than five months and could not verify from internal records that one had been made.⁸
- DA 08-2337: Petitioner missed a clearly applicable filing deadline because of the abrupt departure of the employee responsible for USF filings, a gap before the position could be filled, and the new employee's lack of familiarity with the filing requirements.⁹
- DA 09-884: Petitioners missed clearly applicable filing deadlines by six weeks to more than nine months, claiming that these errors were due to administrative oversight, personnel changes, and/or overburdened regulatory compliance staff.¹⁰
- DA 09-885: Petitioner missed clearly applicable filing deadlines by months because the person responsible for regulatory filings had left the company.¹¹
- DA 09-887: Public service commission made an ETC designation effective as of a date before it had authority to grant ETC designations.¹²

⁸ *Federal-State Joint Board on Universal Service, Cedar Valley Communications, Inc., Petition for Waiver of 47 C.F.R. §§ 54.307(d), 54.314(a), and 54.904(d)*, CC Docket 96-45, Order, 23 FCC Rcd 114, 115-116 ¶ 5 (WCB 2008) (petitioner did not "keep sufficient internal records to ensure it had timely filed its line count information," did not "promptly cure its failure to timely file," and did not "offer an explanation of an extenuating circumstance sufficient to demonstrate the good cause required").

⁹ *Universal Service High-Cost Filing Deadlines, HTC Services, Inc., Petition for Waiver of Section 54.802(a) Deadlines for Submission of Line Count Data by Eligible Telecommunications Carriers Seeking Portable Interstate Access Support*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 23 FCC Rcd 15333, 15334 ¶ 5 (WCB 2008) (petitioner did not "promptly cure its failure to timely file" or "provide evidence of any extenuating circumstances").

¹⁰ *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, LBH, L.L.C., Petition for Waiver of Section 54.802(a) of the Commission's Rules, Knology of the Black Hills, LLC f/k/a PrairieWave Black Hills, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules, USCOC of Cumberland, Inc. Hardy Cellular Telephone Company, Petition for Waiver of Sections 54.809(c), 54.904(d), 54.313(d) and 54.314(d) of the Commission's Rules*, WC Docket No. 08-71, Order, 24 FCC Rcd 4806 (WCB 2009) (petitioners did not "promptly cure their failure to timely file" or "provide evidence of any extenuating circumstances").

¹¹ *Petition for Waiver of Universal Service High-Cost Filing Deadlines, Xfone USA, Inc., Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission's Rules*, WC Docket No. 08-71, Order, 24 FCC Rcd 4813, 4816 ¶ 8 (WCB 2009) (good cause not found where line count data was filed more than three months following the deadline, especially given the petitioner's history of missed deadlines).

¹² *Petition for Waiver of Universal Service High-Cost Filing Deadlines, Federal-State Joint Board on Universal Service, Centennial USVI Operations Corp., Petition for Waiver of Section 54.314(d)(1) of the*

- DA 09-1296: Petitioner missed several clearly applicable filing deadlines by seven to more than 28 months because of confusion over the areas for which support applied.¹³
- DA 10-748: Petitioners missed clearly applicable filing deadlines by four weeks or more, and claimed that errors were due to confusion about filing deadlines, overburdened staff, administrative oversight by third-party vendor hired to prepare filings, personnel changes, and/or changes in accounting systems.¹⁴

None of these cases – whether they concerned initial filing deadlines applicable to newly-designated ETCs or regular filing deadlines applicable to already-established ETCs – involved facts remotely like those giving rise to the pending Petitions. Furthermore, the rationale by which the Bureau denied those requested waivers neither applies here nor offer any precedent for denial of the Petitions. In all but one of these cases, the Bureau denied relief because the ETCs neglected to meet deadlines that clearly were applicable to them, offered no good cause for missing the deadline, and/or did not cure their failure promptly. In the *Centennial USVI Order*, the Bureau denied the requested waiver because the U.S. Virgin Islands Public Service Commission (unlike the Georgia PSC in our case) made the petitioner’s ETC designation

Commission’s Rules, WC Docket No. 08-71, CC Docket No. 96-45, Order, 24 FCC Rcd 4821, 4825 ¶ 10 (WCB 2009) (“*Centennial USVI Order*”) (“Although the USVI PSC attempted to retroactively designate Centennial as an ETC in the USVI as of December 2, 2006, . . . the USVI legislature did not authorize the PSC to designate CMRS providers as ETCs until December 2007.”).

¹³ *Petition for Waiver of Universal Service High-Cost Filing Deadlines, Centennial Communications Corp.*, *Petition for Waiver of Section 54.809 of the Commission’s Rules*, WC Docket No. 08-71, Order, 24 FCC Rcd 7756 (WCB 2009) (lack of clarity in ETC designation order did not excuse failure to file required certifications, especially since petitioner did not seek clarification for more than three years).

¹⁴ *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Federal-State Joint Board on Universal Service, Nebraska Technology & Telecommunications, Inc.*, *Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.802(a), Dixie-Net Communications, Inc.*, *Petition for Waiver of Filing Deadline in 47 C.F.R. 54.802(a), The Community Cable Television Agency of O’Brien County d/b/a The Community Agency and TCA*, *Petition for Waiver of the Commission’s Universal Service Rules, H&B Cable Service, Inc.*, *Petition for Waiver of Section 54.809 of the Commission’s Rules, FiberNet, LLC*, *Petition for Waiver of FCC Rule Section 54.307(c)(4), Skylink L.C.*, *Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission’s Rules*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 25 FCC Rcd 4626, 4631 ¶ 12 (WCB 2010) (“The petitioners did not cure their failure to meet the filing deadlines by promptly filing the required information, nor did the petitioners provide evidence of any extenuating circumstances sufficient to demonstrate the good cause required for us to grant a rule waiver.”).

effective as of a date before it had authority to grant ETC designations.¹⁵ All of these cases are clearly distinguishable from the instant waiver requests.

In sharp contrast to each of the above-referenced cases, Allied Wireless and Georgia 8 have not missed a clearly applicable filing deadline, whether because of confusion, misunderstanding, oversight or any other cause. Rather, Allied Wireless and Georgia 8 cannot be said to have failed to meet an applicable deadline at all because (1) the Georgia PSC had not yet granted their ETC designations by the June 25, 2010 date that strict application of the rule would impose on them, and (2) the Commission does not require carriers to file estimated line counts prior to obtaining ETC designations.¹⁶

Perhaps most notably, the pending Petitions are unlike prior waiver denials because, in contrast to the current situation, none of those denials involved a Government-ordered divestiture process that precluded transfer of pre-existing ETC designations, the result of which has been an interruption of universal service funding that supported the provision of telecom services for many years. The Commission has never before been presented with circumstances like this.

Not only is there no support in Bureau precedent for denying the Petitions, there is abundant precedent for granting filing deadline waivers where special circumstances are present, the loss of ETC funding would cause hardship or disproportionately penalize an ETC, or the loss of ETC funding would undermine the carrier's investments in its network and thus its ability to ensure that customers have and maintain access to adequate services.¹⁷ Though the factual

¹⁵ See *Centennial USVI Order*, 24 FCC Rcd at 4825 ¶ 10.

¹⁶ Any claim that Allied Wireless and Georgia 8 should have made the relevant filings by June 25, 2010 must fail because the companies were under no obligation to make line count filings on that date while their ETC applications were pending with the Georgia PSC. See *Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15585 ¶ 11 (WCB/TAPD 2004) ("[A] carrier *may* file line counts in anticipation of ETC designation but *is not required* to file such line counts." (emphasis added)). In addition, though the Bureau repeatedly has noted that timely line count filings are administratively necessary so that USAC can accurately project demands on the universal service fund, this concern is largely absent here because the Government-appointed management trustee made line count filings for most of the periods in question in anticipation of receiving continuous ETC support.

¹⁷ See, e.g., *Federal-State Joint Board on Universal Service, North River Telephone Cooperative, Petition for Waiver of the Deadline in 47 C.F.R. § 54.904(d)*, CC Docket No. 96-45, Order, 21 FCC Rcd 14937 (WCB 2006); *Federal-State Joint Board on Universal Service, MCI, Inc., Petitions for Waiver of Sections 54.802(a) and 54.809(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 14926 (WCB 2006); *Federal-State Joint Board on Universal Service, Verizon Communications Inc., Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10155 (WCB 2006); *Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for*

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setting of the Petitions is unique, each of these factors, which have supported waiver grants in the past, is present here.

In sum, special circumstances that warrant a deviation from the general rule are present here. Furthermore, as the Georgia PSC – the regulatory body with clear authority over ETC designations in the State of Georgia – has determined and the record in these proceedings confirms, the public interest would be served by granting the requested waivers to allow universal service funding to Allied Wireless and Georgia 8 to be restored as of April 26, 2010. The above-referenced Petitions therefore satisfy the relevant legal standard for a waiver.¹⁸ In addition, as shown above, denial of the Petitions would be inconsistent with Bureau precedent and, indeed, both precedent and policy considerations compel grant of the Petitions. In light of these facts, the Commission should promptly grant the requested waivers.

Please direct any further questions regarding this matter to the undersigned.

Sincerely,



Jeffrey C. Humiston
Vice President and General Counsel

Waiver of Sections 54.307 and 54.314 of the Commission's Rules, CC Docket No. 96-45, Order, 19 FCC Rcd 15580 (WCB/TAPD 2004).

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (A waiver is justified when "special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest.").